

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

vs.

MOTOROLA, INC., et al.,

Defendants.

MOTOROLA MOBILITY LLC, et al.,

Plaintiffs,

vs.

MICROSOFT CORPORATION,

Defendants.

Case No. C10-1823-JLR

JOINT MOTION TO AMEND
PROTECTIVE ORDER

NOTED FOR:

Tuesday, July 23, 2013

Plaintiff Microsoft and Defendants Motorola Solutions, Motorola Mobility, and

General Instrument, through counsel undersigned, respectfully move the Court for entry of the
Second Amended Protective Order Regarding the Disclosure and Use of Discovery Materials
being filed concurrently herewith. The parties' proposed Second Amended Protective Order
(attached hereto as Exhibit A) revises the Amended Protective Order to allow for the disclosure

JOINT MOTION TO AMEND PROTECTIVE
ORDER - 1

No. C10-1823

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1 of "Confidential Business Information" as part of any mock jury exercise conducted by a party,
2 and to non-technical jury or trial consulting services. A red-line reflecting the parties'
3 proposed revisions to the Amended Protective Order is attached hereto as Exhibit B.

4 DATED this 23rd day of July, 2013.

5 CALFO HARRIGAN LEYH & EAKES LLP

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JOINT MOTION TO AMEND PROTECTIVE
ORDER - 3

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1 **CERTIFICATE OF SERVICE**

2 I, Florine Fujita, swear under penalty of perjury under the laws of the State of
3 Washington to the following:

- 4 1. I am over the age of 21 and not a party to this action.
5 2. On the 23rd day of July, 2013, I caused the preceding document to be served on
6 counsel of record in the following manner:

7 **Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:**

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20 DATED this 23rd day of July, 2013.
21

22
23 s/ Florine Fujita
FLORINE FUJITA

24
25 JOINT MOTION TO AMEND PROTECTIVE
ORDER - 6

No. C10-1823

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EXHIBIT A

1 The Honorable James L. Robart
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9

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 MICROSOFT CORPORATION, a
11 Washington corporation,

12 Plaintiff,

13 vs.

14 MOTOROLA, INC., MOTOROLA
15 MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

16 Defendants.

CASE NO. C10-1823-JLR

**SECOND AMENDED PROTECTIVE
ORDER REGARDING THE
DISCLOSURE AND USE OF
DISCOVERY MATERIALS**

1 Microsoft Corporation (“Microsoft”) and Motorola, Inc., Motorola Mobility, Inc., and
2 General Instrument Corporation (collectively “Motorola”) hereby stipulate that this protective
3 order should be entered and will govern the conduct of discovery in this case.

4 1. Confidential Business Information is information which has not been made public
5 and which concerns or relates to the trade secrets, processes, operations, style of work, or
6 apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers,
7 inventories, amount or source of any income, profits, losses, or expenditures of any person, firm,
8 partnership, corporation, or other organization, the disclosure of which information is likely to
9 have the effect of causing substantial harm to the competitive position of the person, firm,
10 partnership, corporation, or other organization from which the information was obtained, unless
11 the Court is required by law to disclose such information.

12 2. (a) Any information submitted in pre-trial discovery or in a pleading, motion,
13 or response to a motion in this action, either voluntarily or pursuant to order, and which is asserted
14 by a supplier to contain or constitute Confidential Business Information shall be so designated by
15 such supplier in writing, or orally at a deposition, conference, or hearing, and shall be segregated
16 from other information being submitted. Documents shall be clearly and prominently marked on
17 their face with the legend: “[SUPPLIER’S NAME] CONFIDENTIAL BUSINESS
18 INFORMATION, SUBJECT TO PROTECTIVE ORDER” or a comparable notice. During the
19 pre-trial phase of this action, such information, whether submitted in writing or in oral testimony,
20 shall be disclosed only *in camera* before the Court and shall be filed only under seal, pursuant to
21 Rule 5(g) of the Local Civil Rules of the United States District Court for the Western District of
22 Washington.

23 (b) The Court may determine that information alleged to be confidential is not
24 confidential, or that its disclosure is necessary for the proper disposition of the proceeding before,
25 during, or after the close of the action herein. If such a determination is made by the Court,
26 opportunity shall be provided to the supplier of such information to argue its confidentiality prior
27 to the time of such ruling.

1 3. In the absence of written permission from the supplier or an order from the Court,
2 any confidential documents or business information submitted in accordance with the provisions
3 of paragraph 2 above shall not be disclosed to any person other than:

- 4 (i) outside counsel for parties to this action, including necessary secretarial and
5 support personnel assisting such counsel;
- 6 (ii) qualified persons taking testimony involving such documents or
7 information and necessary stenographic and clerical personnel thereof;
- 8 (iii) technical experts and their staff who are employed for the purposes of this
9 litigation;
- 10 (iv) T. Andrew Culbert (for Microsoft) and K. McNeill Taylor (for Motorola);
- 11 (v) Up to two additional in-house attorneys for any party conducting a mock
12 jury exercise, the disclosure of Confidential Business Information to such individuals
13 being limited to only that Confidential Business Information disclosed during and as part
14 of the mock jury exercise;
- 15 (vi) the Court;
- 16 (vii) Non-technical jury or trial consulting services; and
- 17 (viii) mock jurors.

18 4. Confidential Business Information submitted in accordance with the provisions of
19 paragraph 2 above shall not be made available to any person designated in paragraphs 3(iii)- (v)
20 and (vii) unless he or she shall have first read this order and shall have signed a writing
21 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,
22 manifesting agreement:

- 23 (i) to be bound by the terms thereof;
- 24 (ii) not to reveal such Confidential Business Information to anyone other than
25 another person designated in paragraph 3; and
- 26 (iii) to utilize such Confidential Business Information solely for purposes of this
27 action.

1 For persons designated in paragraphs 3(iii)-(v), a copy of the signed Attachment A shall be
 2 provided to both parties. Confidential Business Information submitted in accordance with the
 3 provisions of paragraph 2 above shall not be made available to any person designated in paragraph
 4 3(viii) unless he or she shall have first signed a confidentiality agreement confirming that they will
 5 not disclose any such information or use it for any purpose other than for the present case.

6 5. If the Court orders, or if the supplier and all parties to the action agree, that access
 7 to or dissemination of information submitted as Confidential Business Information shall be made
 8 to persons not included in paragraph 3 above, such matter shall only be accessible to or
 9 disseminated to such persons based upon the conditions pertaining to, and obligations arising from
 10 this order, and such persons shall be considered subject to it, unless the Court finds that the
 11 information is not Confidential Business Information as defined in paragraph 1 hereof

12 6. In addition to the persons included in paragraph 3 above, Confidential Business
 13 Information contained in responses to interrogatories, answers to requests for admission,
 14 submissions to the Court, expert reports (exclusive of exhibits and source code excerpts), opinions
 15 and orders of the Court may be accessible to or disseminated to the following two in- house
 16 counsel, who are members of at least one state bar in good standing, with direct responsibility for
 17 managing this litigation:

- 18 (a) for Motorola, Tom Miller and Richard A. Wulff
- 19 (b) for Microsoft, David E. Killough.

20 provided that (1) Confidential Business Information pertaining to licensing or other commercially
 21 sensitive financial information shall not be made available under this paragraph 6 to such
 22 designated in-house counsel; the supplier shall designate such Confidential Business Information
 23 pertaining to licensing or other commercially sensitive financial information as “[SUPPLIER’S
 24 NAME] CONFIDENTIAL FINANCIAL INFORMATION — OUTSIDE ATTORNEYS’ EYES
 25 ONLY — SUBJECT TO PROTECTIVE ORDER” and promptly provide a redacted version of
 26 such document that may be disseminated to the in-house counsel designated under this paragraph
 27 6; and (2) such in-house counsel shall have first read this order and shall have signed a writing

1 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,
 2 manifesting agreement:

3 (i) to be bound by the terms thereof;

4 (ii) not to reveal such Confidential Business Information to anyone other than
 5 another person designated in paragraph 3; and

6 (iii) to utilize such Confidential Business Information solely for purposes of this
 7 action.

8 7. Subject to the restrictions of paragraph 6 above, the two in-house counsel
 9 designated therein shall not be excluded from any confidential portion of the trial or other in-
 10 Court proceedings in this case.

11 8. Any Confidential Business Information submitted to the Court in connection with a
 12 motion or other proceeding within the purview of this action shall be submitted under seal
 13 pursuant to paragraph 2 above. Any portion of a transcript in connection with this action
 14 containing any Confidential Business Information submitted pursuant to paragraph 2 above shall
 15 be bound separately and filed under seal. When any Confidential Business Information submitted
 16 in accordance with paragraph 2 above is included in an authorized transcript of a deposition or
 17 exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind
 18 such confidential portions and separately label them [SUPPLIER'S NAME], CONFIDENTIAL
 19 BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER. Before a court reporter
 20 receives any such information, he or she shall have first read this order and shall have agreed in
 21 writing to be bound by the terms thereof Alternatively, he or she shall sign the agreement included
 22 as Attachment B hereto. Copies of each such signed agreement shall be provided to the supplier
 23 of such Confidential Business Information.

24 9. The restrictions upon, and obligations accruing to, persons who become subject to
 25 this order shall not apply to any information submitted in accordance with paragraph 2 above to
 26 which the person asserting the confidential status thereof agrees in writing, or the Court rules after
 27 an opportunity for hearing, that the information was publicly known at the time it was supplied to
 28 the receiving party or has since become publicly known through no fault of the receiving party.

1 10. If while this action is before the Court, a party to this order who is to be a recipient
 2 of any business information designated as confidential and submitted in accordance with
 3 paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the
 4 supplier in writing and they will thereupon confer as to the status of the subject information
 5 proffered within the context of this order. If prior to or at the time of such a conference, the
 6 supplier withdraws its designation of such information as being subject to this order, but
 7 nonetheless submits such information for purposes of the action, such supplier shall express the
 8 withdrawal in writing, and serve such withdrawal upon all parties. If the recipient and supplier are
 9 unable to concur upon the status of the subject information submitted as Confidential Business
 10 Information within ten days from the date of notification of such disagreement, any party to this
 11 order may raise the issue of the designation of such a status to the Court who will rule upon the
 12 matter. The Court may *sua sponte* question the designation of the confidential status of any
 13 information and, after opportunity for hearing, may remove the confidentiality designation.

14 11. No less than 10 days (or any other period of time designated by the Court) prior to
 15 the initial disclosure to a proposed expert of any confidential information submitted in accordance
 16 with paragraph 2, the party proposing to use such expert shall submit in writing the name of such
 17 proposed expert and his or her educational and employment history to the supplier. If the supplier
 18 objects to the disclosure of such Confidential Business Information to such proposed expert as
 19 inconsistent with the language or intent of this order or on other grounds, it shall notify the
 20 recipient in writing of its objection and the grounds therefor prior to the initial disclosure. If the
 21 dispute is not resolved on an informal basis within ten days of receipt of such notice of objection,
 22 the supplier shall submit immediately each objection to the Court for a ruling. The submission of
 23 such Confidential Business Information to such proposed expert shall be withheld pending the
 24 ruling of the Court.

25 12. If Confidential Business Information submitted in accordance with paragraph 2 is
 26 disclosed to any person other than in the manner authorized by this protective order, the party
 27 responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure
 28 to the attention of the supplier and the Court and, without prejudice to other rights and remedies of

1 the supplier, make every effort to prevent further disclosure by it or by the person who was the
 2 recipient of such information.

3 13. Nothing in this order shall abridge the right of any person to seek judicial review or
 4 to pursue other appropriate judicial action with respect to any ruling made by the Court concerning
 5 the issue of the status of Confidential Business Information.

6 14. Upon final termination of this action, each party that is subject to this order shall
 7 assemble and return to the supplier all items containing Confidential Business Information
 8 submitted in accordance with paragraph 2 above, including all copies of such matter which may
 9 have been made. Alternatively, the parties subject to this order may, with the written consent of
 10 the supplier, destroy all items containing Confidential Business Information and certify to the
 11 supplier (or his counsel) that such destruction has taken place.

12 15. If any Confidential Business Information which is supplied in accordance with
 13 paragraph 2 above is supplied by a nonparty to this action, such a nonparty shall be considered a
 14 "supplier" as that term is used in the context of this order.

15 16. Each nonparty supplier shall be provided a copy of this order by the party seeking
 16 information from said supplier.

17 17. The inadvertent production of any document or information (whether designated as
 18 Confidential Business Information or not) shall not be deemed to waive any attorney-client
 19 privilege, work product protection, or other privilege or immunity that would otherwise attach to
 20 the document or information produced, or to other documents or information, so long as the
 21 procedures of paragraphs 18 and 19 below are followed.

22 18. If a producing party or person discovers that a privileged, protected, or otherwise
 23 immune document or information has been produced, the party or person must, promptly after
 24 discovery, notify all other party or parties of the claim of privilege or other protection or
 25 immunity. Upon such notice, each other party shall use its best efforts to retrieve the original and
 26 all copies of the identified document or information of which the party is aware, shall promptly
 27 destroy all such copies of the identified document or information, and shall notify the producing
 28 party in writing that it has done so within ten (10) calendar days of receiving such notice. Such

1 destruction shall not constitute an acknowledgement that the identified document or information
 2 is, in fact, privileged or entitled to protection or immunity and shall not preclude any party from
 3 later moving the Court to compel the production of the identified document or information.
 4 Within a reasonable time after notifying the other party or parties of a claim of privilege or other
 5 protection or immunity, the Producing Party shall provide a privilege log for those materials.

6 19. If a receiving party receives any document or information that appears to be subject
 7 to an attorney-client privilege, work product protection, or other privilege or immunity that would
 8 otherwise attach to the document or information, and where it is reasonably apparent that the
 9 document or information was provided or made available through inadvertence, the receiving
 10 party must refrain from examining the document or information any more than is essential to
 11 ascertain whether the document or information is likely privileged, protected, or otherwise
 12 immune, and shall immediately notify the producing party in writing that the receiving party
 13 possesses material that appears to be privileged, protected, or otherwise immune. The procedures
 14 of paragraph 18 shall then apply.

15 20. The parties have agreed to follow the provisions of Fed. R. Civ. P. 26(b)(4)(B)-(D),
 16 as amended effective December 1, 2010, with respect to the protection of draft expert reports and
 17 communications between a party's attorney(s) and an expert(s). In addition, the parties have
 18 agreed that notes taken by the parties' experts in the course of the preparation of their reports,
 19 drafts of the expert reports, and all communications between counsel for the parties and their
 20 experts (including, but not limited to, emails and other written correspondence) (all of the
 21 foregoing hereinafter referred to as "Expert Work Product") need not be retained and shall be not
 22 produced in this or any other action. Expert Work Product shall not include communications,
 23 information and things that are relied upon by the expert in his or her opinions, or which otherwise
 24 form the basis of the expert's report. Neither the terms of this paragraph nor the parties'
 25 agreement to them implies that any of the information restricted from discovery in this paragraph
 26 would otherwise be discoverable.

27 21. Confidential Source Code shall mean human-readable programming language text
 28 that defines software, firmware, or electronic hardware descriptions. Confidential Source Code

1 includes, without limitation, computer code; scripts; assembly; object code; source code listings
 2 and descriptions of source code; object code listings and descriptions of object code; Hardware
 3 Description Language (HDL); Register Transfer Level (RTL) files that describe the hardware
 4 design of any ASIC or other chip; similarly sensitive implementation details; files containing text
 5 written in "C," "C++," assembler, VHDL, Verilog, and digital signal processor (DSP)
 6 programming languages; ".include files;" "make" files; link files; and other human- readable text
 7 files used in the generation and/or building of software directly executed on a microprocessor,
 8 microcontroller, or DSP. Confidential Source Code is a form of, and shall be afforded all of the
 9 same protections as, Confidential Business Information as defined in paragraph 1 hereto unless
 10 otherwise provided in paragraphs 21 to 26. The restrictions herein on Confidential Source Code
 11 do not apply to publicly-available source code available as open source code.

12 22. To the extent that a party wishes to obtain access to Confidential Source Code, the
 13 following procedures may apply at the option of the supplier. Nothing in this Order shall be
 14 construed as a representation or admission by a party that Confidential Source Code is properly
 15 discoverable in this action, or to obligate any party to produce Confidential Source Code.

16 23. Documents or things that comprise a party's confidential, proprietary and/or trade
 17 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE.
 18 Documents or things that include or are accompanied by confidential, proprietary and/or trade
 19 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE only if
 20 such confidential, proprietary and/or trade secret source code or object code cannot reasonably be
 21 segregated from the document or thing. The following conditions shall govern the production,
 22 review and use of documents or things designated CONFIDENTIAL SOURCE CODE.

23 24. All information designated as CONFIDENTIAL SOURCE CODE shall be subject
 24 to the following provisions:

25 (i) Subject to the following notice provisions and each producing party's
 26 written objections, each producing party shall make its responsive CONFIDENTIAL
 27 SOURCE CODE continuously available for inspection during discovery and through the
 28 conclusion of the trial in this action. Any single reviewing session (conducted during one

1 business day or during consecutive business days of review) shall be conducted during
 2 regular business hours (9:00 A.M. to 6:00 P.M. local time) on four (4) calendar days'
 3 written (including email) notice, or during such other hours as may be mutually and
 4 reasonably agreed upon on reasonable notice.

5 (ii) A list of names of persons who will view the source code will be provided
 6 to the producing party in conjunction with the written notice requesting inspection. The
 7 receiving party shall maintain a daily log of the names of persons who enter the source
 8 code viewing room (see paragraph 24(iv) below) to view the source code and note on the
 9 log when these persons enter and depart. The producing party shall be entitled to have a
 10 person observe all entrances and exits from the source code viewing room, and to receive a
 11 copy of the log, but shall not otherwise be entitled to observe the receiving party's
 12 inspection.

13 (iii) All source code produced pursuant to these provisions will be made
 14 available by the producing party at the following locations:

- 15 • By Motorola, at the offices of Ropes & Gray LLP, 111 South Wacker Drive, 46th
 Floor, Chicago, Illinois 60606;
- 16 • By Microsoft, at the offices of Sidley Austin LLP, 1501 K Street NW, Washington,
 DC 20005; and
- 17 • By third parties, at such location(s) as may be mutually agreed to by the producing
 third party and the requesting party, or as otherwise ordered by the Court.

18 (iv) All source code will be made available in a private room, on a secured
 19 computer without Internet access or network access to other computers, as necessary and
 20 appropriate to prevent and protect against any unauthorized copying, transmission,
 21 removal, or other transfer of any source code outside or away from the computer on which
 22 the source code is provided for inspection (the "Source Code Computer"). The producing
 23 party shall be obligated to install such reasonable tools or programs necessary to review
 24 and search the code produced on the platform produced, as specified by the receiving
 25 party, which the receiving party may provide if the producing party does not have. For
 26 example, prior to the date of the inspection, a text editor or IDE capable of performing
 27
 28

1 syntax highlighting should be installed on the Source Code Computer. The producing
2 party shall not be obligated to install tools or programs capable of compiling and running
3 source code. To the extent the receiving party provides the producing party with tools or
4 programs to install for use during a reviewing session, any such tools or programs must be
5 provided no later than five (5) business days in advance of the first reviewing session for
6 which such installation is desired. Thereafter, such tools or programs shall remain on the
7 Source Code Computer throughout the discovery period, absent agreement to the contrary.

8 (v) The receiving party's outside counsel and/or technical advisers shall be
9 entitled to take notes relating to the source code but may not copy the source code into the
10 notes. Such notes shall be subject to the provisions of paragraph 24(x) below. No copies
11 of all or any portion of the source code may leave the room in which the source code is
12 inspected. Furthermore, no other written or electronic record of the source code is
13 permitted except as otherwise provided herein.

14 (vi) During inspection of the code, the receiving party may compile a list of
15 source code files to be produced. The receiving party will only identify such files as are
16 reasonably necessary to facilitate the receiving party's preparation of the case, including
17 (1) when reasonably necessary to prepare any filing with the Court or to serve any
18 pleadings or other papers on any other party, (2) to prepare internal attorney work product
19 materials, (3) or to prepare other necessary case materials such as testifying expert reports,
20 consulting expert written analyses, and related drafts and correspondences. In no event
21 may the receiving party identify more than those files necessary to analyze the issues in
22 this case during the duration of the case without prior written approval by the producing
23 party. Upon identification of such files by the receiving party, the producing party shall
24 print, append production numbers to, and label such files with the file's complete file path
25 (*e.g., ./product1/source/main/test/test.h*) and the designation CONFIDENTIAL SOURCE
26 CODE. If the producing party objects that identified files are not reasonably necessary to
27 any case preparation activity, the producing party shall make such objection known to the
28 receiving party within five (5) business days of the identification of any files by the

1 receiving party. If, after meeting and conferring, the producing party and the receiving
 2 party cannot resolve the objection, the producing party shall be entitled to seek a judicial
 3 resolution of whether or not the identified source code in question is reasonably necessary
 4 to any case preparation activity. In the absence of any objection, or upon resolution of any
 5 such dispute by the Court, the producing party shall provide one printed copy of the
 6 identified files to the receiving party within five (5) business days of the identification of
 7 such files by the receiving party or, if applicable, resolution of a dispute by the Court. The
 8 printed pages shall constitute part of the source code produced by the producing party in
 9 this action.

10 (vii) Unless otherwise agreed in advance by the parties in writing, following
 11 each reviewing session (conducted during one business day or during consecutive business
 12 days of review), the receiving party's outside counsel and/or technical advisers shall
 13 remove all notes, documents, laptops, and all other materials from the room that may
 14 contain work product and/or attorney-client privileged information. The producing party
 15 shall not be responsible for any items left in the room following each inspection session.

16 (viii) The receiving party will not copy, remove, or otherwise transfer any source
 17 code from the Source Code Computer including, without limitation, copying, removing, or
 18 transferring the source code onto any other computers or peripheral equipment. The
 19 receiving party will not transmit any source code in any way from the producing party's
 20 facilities or the offices of its outside counsel of record.

21 (ix) Documents designated CONFIDENTIAL SOURCE CODE may only be
 22 viewed by or disclosed to outside counsel or the receiving party's technical advisers
 23 approved by the producing party and their necessary support personnel. The term
 24 "technical adviser" shall mean an independent, outside expert witness or consultant with
 25 whom counsel may deem it appropriate to consult, subject to the following provision.
 26 Documents designated CONFIDENTIAL SOURCE CODE may not be disclosed to in-
 27 house counsel.

1 (x) A party desiring to disclose information to a technical adviser shall give
2 prior written notice to the producing party or non-party, who shall have ten (10) business
3 days after such notice is given to object in writing. A party desiring to disclose
4 CONFIDENTIAL SOURCE CODE information to a technical adviser must provide the
5 following information for each technical adviser: (i) name, address, curriculum vitae,
6 current employer, and employment (including consulting) history for the past four (4)
7 years; and (ii) a listing of cases in which the witness has testified as an expert at trial or by
8 deposition within the preceding four years. No CONFIDENTIAL SOURCE CODE
9 information shall be disclosed to such expert(s) or consultant(s) until after the expiration of
10 the foregoing notice period.

11 (xi) The outside counsel and technical advisers (who have been approved to
12 access source code under paragraphs 24(ix) and 24(x) above) for a receiving party shall
13 maintain and store any paper copies of the source code or notes related to such source code
14 (as referenced in paragraphs 24(v) and 24(vi)) at their offices in a manner that prevents
15 duplication of or unauthorized access to the source code or notes, including, without
16 limitation, storing the source code or notes in a locked room or cabinet at all times when
17 those materials are not in use;

18 (xii) The receiving party's outside counsel of record may make no more than
19 five additional paper copies of any portions of the source code files identified pursuant to
20 paragraph 24(vi), not including copies attached to court filings, and shall maintain a log of
21 all copies of the source code (received from a producing party) that are provided by the
22 receiving party to any qualified person. The log shall include the names of the recipients
23 and reviewers of copies and locations where the copies are stored. Any paper copies of
24 source code shall be designated CONFIDENTIAL SOURCE CODE — and shall be stored
25 or viewed only at (1) the offices of outside counsel for the receiving party, (2) the offices
26 of technical advisers who have been approved to access source code under paragraphs
27 24(ix) and 24(x), (3) the site where any deposition is taken, (4) the Court, or (5) any
28 intermediate location necessary to transport the information to a hearing, trial, or

1 deposition. Any such paper copies shall be maintained at all times in a locked and secure
 2 location. The producing party shall not unreasonably deny a receiving party's request to
 3 make (and log) additional copies, providing that the request is for good cause and for use
 4 that otherwise complies with this order. The producing party shall be entitled to a copy of
 5 the log upon request, and at the conclusion of the litigation.

6 (xiii) The receiving party may include excerpts of source code in a pleading,
 7 exhibit, expert report, discovery document, deposition transcript, other Court document, or
 8 any drafts of these documents ("Source Code Documents"). The receiving party shall only
 9 include such excerpts as are reasonably necessary for the purposes for which such part of
 10 the source code is used — as an example, excerpts of approximately 25 to 40 lines in
 11 length are presumptively reasonable.

12 (xiv) To the extent portions of source code are quoted in a Source Code
 13 Document, either (1) the entire document will be stamped CONFIDENTIAL SOURCE
 14 CODE or (2) those pages containing quoted source code will be separately bound, and
 15 stamped as CONFIDENTIAL SOURCE CODE. All Source Code Documents shall also be
 16 marked with the legend "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO
 17 PROTECTIVE ORDER," or a comparable notice, and shall be treated as Confidential
 18 Business Information pursuant to this Protective Order.

19 (xv) All paper copies of source code shall be securely destroyed if they are no
 20 longer necessary in the litigation (*e.g.*, extra copies at the conclusion of a deposition).
 21 Copies of source code that are marked as deposition exhibits shall not be provided to the
 22 court reporter or attached to deposition transcripts; rather, the deposition record will
 23 identify the exhibit by its production numbers.

24 (xvi) The receiving party may not create electronic images, or any other images,
 25 of the source code from the paper copy for use on a computer (*e.g.*, may not scan the
 26 source code to a PDF, or photograph the code). The receiving party may create an
 27 electronic copy or image of selected portions of the source code only when reasonably
 28 necessary to accomplish any filing with the Court or to serve any pleadings or other papers

1 on any other party (including expert reports). Images or copies of source code shall not be
 2 included in correspondence between the parties (references to production numbers shall be
 3 used instead) and shall be omitted from pleadings and other papers except to the extent
 4 permitted herein.

5 25. Unless otherwise ordered by the Court, Confidential Source Code designated as
 6 “CONFIDENTIAL SOURCE CODE” shall be subject to the provisions set forth in paragraphs 21
 7 to 26 and may be disclosed, subject to paragraphs 21 to 26, solely to:

8 (a) outside counsel representing the parties to this action, as defined in
 9 paragraph 3(i), including necessary secretarial and support personnel regularly employed by and
 10 assisting such counsel, except that, unless otherwise agreed, no outside counsel who is involved in
 11 competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3
 12 (Fed. Cir. 1984), shall have access to Confidential Source Code designated as “CONFIDENTIAL
 13 SOURCE CODE;”

14 (b) any outside expert or consultant retained by a party for the purposes of this
 15 action and who satisfies paragraph 3(iii) of this Order, provided that disclosure is only to the
 16 extent necessary to perform such work; and provided that:

17 (i) such expert or consultant has agreed to be bound by the provisions
 18 of this Order as required by paragraphs 3, 4, and 11 of this Order,

19 (ii) such expert or consultant is not involved in competitive decision-
 20 making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed.
 21 Cir. 1984), on behalf of a party or a competitor of a party in the technical subject
 22 matter of the Confidential Business Information produced, and

23 (iii) no unresolved objections to such disclosure exist after proper notice
 24 has been given to all parties as set forth in paragraphs 3, 4, and 11 of this Order;

25 (c) court reporters, stenographers, and videographers retained to record
 26 testimony taken in this action, provided that such court reporters, stenographers, and
 27 videographers have agreed to be bound by the provisions of this Order as required by paragraph 4
 28 of this Order;

(d) the Court;

(f) any mediator who is assigned to hear this matter, and his or her staff,

7 subject to their agreement to maintain confidentiality to the same degree as required by this Order;

(g) any other person with the prior written consent of the supplier.

9 26. Access to and review of the Confidential Source Code shall be strictly for the
10 purpose of investigating the claims and defenses at issue in this action. No person shall review or
11 analyze any Confidential Source Code for purposes unrelated to this action, nor may any person
12 use any knowledge gained as a result of reviewing Confidential Source Code in this action in any
13 other pending or future dispute, proceeding, patent prosecution, or litigation.

1 **AGREED AND STIPULATED TO:**

2 CALFO HARRIGAN LEYH & EAKES LLP SUMMIT LAW GROUP PLLC

3
4 By /s/ Arthur W. Harrigan, Jr.

Arthur W. Harrigan, Jr., WSBA #1751
Christopher Wion, WSBA #33207
Shane P. Cramer, WSBA #35099

5 By /s/ Ralph Palumbo

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11 (213) 443-3000
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13 ***Attorneys for Defendants Motorola Solutions,
14 Inc., Motorola Mobility, Inc.***

ORDER

As stipulated above, IT IS SO ORDERED.

DATED this ____ day of _____, 2013.

THE HONORABLE JAMES L. ROBART

Attachment A

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

5 MICROSOFT CORPORATION, a
Washington corporation,

Case No. 10-1823

Plaintiff.

PROTECTIVE ORDER REGARDING THE DISCLOSURE AND USE OF DISCOVERY MATERIALS

VS.

9 MOTOROLA, INC., MOTOROLA
10 MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION;

Defendants

CONFIDENTIALITY AGREEMENT
PURSUANT TO PROTECTIVE ORDER

I, _____, hereby certify that I have read the Protective Order
Regarding the Disclosure and Use of Discovery Materials (the “Order”) in the above-captioned
case, that I agree to comply with the Order in all respects, and that I hereby submit and waive any
objection to the jurisdiction of the United States District Court for the Western District of
Washington for the adjudication of any dispute concerning or related to my compliance with the
Order.

I understand and agree, in particular, that any Confidential Business Information and any copies, excerpts, or summaries thereof, as well as any knowledge or information derived from any of the aforementioned items, may be used solely for purposes of this litigation and may not be used for any other purpose, including without limitation, and business, commercial or academic purpose.

1 I further understand and agree that failure to abide fully by the terms of the Order may
2 result in legal action against me, including being held in contempt of court and liability for
3 monetary damages.

4

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Signature:_____

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Please print or type the following:

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Name:_____

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Title and Affiliation:_____

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Address:_____

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Telephone:_____

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Attachment B

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MICROSOFT CORPORATION, a
Washington corporation,

Case No. 10-1823

Plaintiff.

PROTECTIVE ORDER REGARDING THE DISCLOSURE AND USE OF DISCOVERY MATERIALS

VS.

9 MOTOROLA, INC., MOTOROLA
10 MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION;

Defendants

**NONDISCLOSURE AGREEMENT FOR
REPORTER/STENOGRAPHER/TRANSLATOR**

I, _____, do solemnly swear or affirm that I will not divulge any information communicated to me in any confidential portion of the action or hearing in *Microsoft Corporation v. Motorola, Inc., Motorola Mobility, Inc., and General Instrument Corporation*, Civil Action No. 10-1823, except as permitted in the protective order issued in this case. I will not directly or indirectly use or allow the use of such information for any purpose other than that directly associated with my official duties in this case.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information communicated during any confidential portion of the action or hearing in this case.

1 I also affirm that I do not hold any position or official relationship with any of the
2 participants in said action.

3 Signed _____
4 Dated _____
5 Firm or Affiliation_____

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EXHIBIT B

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

CASE NO. C10-1823-JLR

Plaintiff.

VS.

**SECOND AMENDED PROTECTIVE
ORDER REGARDING THE
DISCLOSURE AND USE OF
DISCOVERY MATERIALS**

MOTOROLA, INC., MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

1 Microsoft Corporation (“Microsoft”) and Motorola, Inc., Motorola Mobility, Inc., and
2 General Instrument Corporation (collectively “Motorola”) hereby stipulate that this protective
3 order should be entered and will govern the conduct of discovery in this case.

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4 1. Confidential Business Information is information which has not been made public
5 and which concerns or relates to the trade secrets, processes, operations, style of work, or
6 apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers,
7 inventories, amount or source of any income, profits, losses, or expenditures of any person, firm,
8 partnership, corporation, or other organization, the disclosure of which information is likely to
9 have the effect of causing substantial harm to the competitive position of the person, firm,
10 partnership, corporation, or other organization from which the information was obtained, unless
11 the Court is required by law to disclose such information.

12 2. (a) Any information submitted in pre-trial discovery or in a pleading, motion,
13 or response to a motion in this action, either voluntarily or pursuant to order, and which is asserted
14 by a supplier to contain or constitute Confidential Business Information shall be so designated by
15 such supplier in writing, or orally at a deposition, conference, or hearing, and shall be segregated
16 from other information being submitted. Documents shall be clearly and prominently marked on
17 their face with the legend: “[SUPPLIER’S NAME] CONFIDENTIAL BUSINESS
18 INFORMATION, SUBJECT TO PROTECTIVE ORDER” or a comparable notice. During the
19 pre-trial phase of this action, such information, whether submitted in writing or in oral testimony,
20 shall be disclosed only *in camera* before the Court and shall be filed only under seal, pursuant to
21 Rule 5(g) of the Local Civil Rules of the United States District Court for the Western District of
22 Washington.

23 (b) The Court may determine that information alleged to be confidential is not
24 confidential, or that its disclosure is necessary for the proper disposition of the proceeding before,
25 during, or after the close of the action herein. If such a determination is made by the Court,
26 opportunity shall be provided to the supplier of such information to argue its confidentiality prior
27 to the time of such ruling.

28

1 3. In the absence of written permission from the supplier or an order from the Court,
2 any confidential documents or business information submitted in accordance with the provisions
3 of paragraph 2 above shall not be disclosed to any person other than:

- 4 (i) outside counsel for parties to this action, including necessary secretarial and
5 support personnel assisting such counsel;
- 6 (ii) qualified persons taking testimony involving such documents or
7 information and necessary stenographic and clerical personnel thereof;
- 8 (iii) technical experts and their staff who are employed for the purposes of this
9 litigation;

10 (iv) T. Andrew Culbert (for Microsoft) and K. McNeill Taylor (for Motorola);

11 **and**

12 **the Court;**

13 **(v) Up to two additional in-house attorneys for any party conducting a mock**
14 **jury exercise, the disclosure of Confidential Business Information to such individuals**
15 **being limited to only that Confidential Business Information disclosed during and as part**
16 **of the mock jury exercise;**

17 **(vi) the Court;**

18 **(vii) Non-technical jury or trial consulting services; and**

19 **(viii) -mock jurors.**

20 4. Confidential Business Information submitted in accordance with the provisions of
21 paragraph 2 above shall not be made available to any person designated in paragraphs 3(iii)- (iv)
22 **and (vii)** unless he or she shall have first read this order and shall have signed a writing
23 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,
24 manifesting agreement:

- 25 (i) to be bound by the terms thereof;
- 26 (ii) not to reveal such Confidential Business Information to anyone other than
27 another person designated in paragraph 3; and

1 (iii) to utilize such Confidential Business Information solely for purposes of this
 2 action.

3 (iii) For persons designated in paragraphs 3(iii)-(iv), a copy of the signed Attachment A shall
 4 be provided to both parties. Confidential Business Information submitted in accordance with the
 5 provisions of paragraph 2 above shall not be made available to any person designated in paragraph
 6 3(viii) unless he or she shall have first signed a confidentiality agreement confirming that they will
 7 not disclose any such information or use it for any purpose other than for the present case.

8 5. If the Court orders, or if the supplier and all parties to the action agree, that access
 9 to or dissemination of information submitted as Confidential Business Information shall be made
 10 to persons not included in paragraph 3 above, such matter shall only be accessible to or
 11 disseminated to such persons based upon the conditions pertaining to, and obligations arising from
 12 this order, and such persons shall be considered subject to it, unless the Court finds that the
 13 information is not Confidential Business Information as defined in paragraph 1 hereof

14 6. In addition to the persons included in paragraph 3 above, Confidential Business
 15 Information contained in responses to interrogatories, answers to requests for admission,
 16 submissions to the Court, expert reports (exclusive of exhibits and source code excerpts), opinions
 17 and orders of the Court may be accessible to or disseminated to the following two in-house
 18 counsel, who are members of at least one state bar in good standing, with direct responsibility for
 19 managing this litigation:

- 20 (a) for Motorola, Tom Miller and Richard A. Wulff
 21 (b) for Microsoft, David E. Killough.

22 provided that (1) Confidential Business Information pertaining to licensing or other commercially
 23 sensitive financial information shall not be made available under this paragraph 6 to such
 24 designated in-house counsel; the supplier shall designate such Confidential Business Information
 25 pertaining to licensing or other commercially sensitive financial information as “[SUPPLIER’S
 26 NAME] CONFIDENTIAL FINANCIAL INFORMATION — OUTSIDE ATTORNEYS’ EYES
 27 ONLY — SUBJECT TO PROTECTIVE ORDER” and promptly provide a redacted version of
 28 such document that may be disseminated to the in-house counsel designated under this paragraph

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1 6; and (2) such in-house counsel shall have first read this order and shall have signed a writing
 2 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,
 3 manifesting agreement:

- 4 (i) to be bound by the terms thereof;
- 5 (ii) not to reveal such Confidential Business Information to anyone other than
 another person designated in paragraph 3; and
- 6 (iii) to utilize such Confidential Business Information solely for purposes of this
 action.

7 7. Subject to the restrictions of paragraph 6 above, the two in-house counsel
 10 designated therein shall not be excluded from any confidential portion of the trial or other in-
 11 Court proceedings in this case.

12 8. Any Confidential Business Information submitted to the Court in connection with a
 13 motion or other proceeding within the purview of this action shall be submitted under seal
 14 pursuant to paragraph 2 above. Any portion of a transcript in connection with this action
 15 containing any Confidential Business Information submitted pursuant to paragraph 2 above shall
 16 be bound separately and filed under seal. When any Confidential Business Information submitted
 17 in accordance with paragraph 2 above is included in an authorized transcript of a deposition or
 18 exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind
 19 such confidential portions and separately label them [SUPPLIER'S NAME], CONFIDENTIAL
 20 BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER. Before a court reporter
 21 receives any such information, he or she shall have first read this order and shall have agreed in
 22 writing to be bound by the terms thereof Alternatively, he or she shall sign the agreement included
 23 as Attachment B hereto. Copies of each such signed agreement shall be provided to the supplier
 24 of such Confidential Business Information.

25 9. The restrictions upon, and obligations accruing to, persons who become subject to
 26 this order shall not apply to any information submitted in accordance with paragraph 2 above to
 27 which the person asserting the confidential status thereof agrees in writing, or the Court rules after
 28

1 an opportunity for hearing, that the information was publicly known at the time it was supplied to
 2 the receiving party or has since become publicly known through no fault of the receiving party.

3 10. If while this action is before the Court, a party to this order who is to be a recipient
 4 of any business information designated as confidential and submitted in accordance with
 5 paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the
 6 supplier in writing and they will thereupon confer as to the status of the subject information
 7 proffered within the context of this order. If prior to or at the time of such a conference, the
 8 supplier withdraws its designation of such information as being subject to this order, but
 9 nonetheless submits such information for purposes of the action, such supplier shall express the
 10 withdrawal in writing, and serve such withdrawal upon all parties. If the recipient and supplier are
 11 unable to concur upon the status of the subject information submitted as Confidential Business
 12 Information within ten days from the date of notification of such disagreement, any party to this
 13 order may raise the issue of the designation of such a status to the Court who will rule upon the
 14 matter. The Court may *sua sponte* question the designation of the confidential status of any
 15 information and, after opportunity for hearing, may remove the confidentiality designation.

16 11. No less than 10 days (or any other period of time designated by the Court) prior to
 17 the initial disclosure to a proposed expert of any confidential information submitted in accordance
 18 with paragraph 2, the party proposing to use such expert shall submit in writing the name of such
 19 proposed expert and his or her educational and employment history to the supplier. If the supplier
 20 objects to the disclosure of such Confidential Business Information to such proposed expert as
 21 inconsistent with the language or intent of this order or on other grounds, it shall notify the
 22 recipient in writing of its objection and the grounds therefor prior to the initial disclosure. If the
 23 dispute is not resolved on an informal basis within ten days of receipt of such notice of objection,
 24 the supplier shall submit immediately each objection to the Court for a ruling. The submission of
 25 such Confidential Business Information to such proposed expert shall be withheld pending the
 26 ruling of the Court.

27 12. If Confidential Business Information submitted in accordance with paragraph 2 is
 28 disclosed to any person other than in the manner authorized by this protective order, the party

1 responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure
 2 to the attention of the supplier and the Court and, without prejudice to other rights and remedies of
 3 the supplier, make every effort to prevent further disclosure by it or by the person who was the
 4 recipient of such information.

5 13. Nothing in this order shall abridge the right of any person to seek judicial review or
 6 to pursue other appropriate judicial action with respect to any ruling made by the Court concerning
 7 the issue of the status of Confidential Business Information.

8 14. Upon final termination of this action, each party that is subject to this order shall
 9 assemble and return to the supplier all items containing Confidential Business Information
 10 submitted in accordance with paragraph 2 above, including all copies of such matter which may
 11 have been made. Alternatively, the parties subject to this order may, with the written consent of
 12 the supplier, destroy all items containing Confidential Business Information and certify to the
 13 supplier (or his counsel) that such destruction has taken place.

14 15. If any Confidential Business Information which is supplied in accordance with
 15 paragraph 2 above is supplied by a nonparty to this action, such a nonparty shall be considered a
 16 "supplier" as that term is used in the context of this order.

17 16. Each nonparty supplier shall be provided a copy of this order by the party seeking
 18 information from said supplier.

19 17. The inadvertent production of any document or information (whether designated as
 20 Confidential Business Information or not) shall not be deemed to waive any attorney-client
 21 privilege, work product protection, or other privilege or immunity that would otherwise attach to
 22 the document or information produced, or to other documents or information, so long as the
 23 procedures of paragraphs 18 and 19 below are followed.

24 18. If a producing party or person discovers that a privileged, protected, or otherwise
 25 immune document or information has been produced, the party or person must, promptly after
 26 discovery, notify all other party or parties of the claim of privilege or other protection or
 27 immunity. Upon such notice, each other party shall use its best efforts to retrieve the original and
 28 all copies of the identified document or information of which the party is aware, shall promptly

1 destroy all such copies of the identified document or information, and shall notify the producing
 2 party in writing that it has done so within ten (10) calendar days of receiving such notice. Such
 3 destruction shall not constitute an acknowledgement that the identified document or information
 4 is, in fact, privileged or entitled to protection or immunity and shall not preclude any party from
 5 later moving the Court to compel the production of the identified document or information.
 6 Within a reasonable time after notifying the other party or parties of a claim of privilege or other
 7 protection or immunity, the Producing Party shall provide a privilege log for those materials.

8 19. If a receiving party receives any document or information that appears to be subject
 9 to an attorney-client privilege, work product protection, or other privilege or immunity that would
 10 otherwise attach to the document or information, and where it is reasonably apparent that the
 11 document or information was provided or made available through inadvertence, the receiving
 12 party must refrain from examining the document or information any more than is essential to
 13 ascertain whether the document or information is likely privileged, protected, or otherwise
 14 immune, and shall immediately notify the producing party in writing that the receiving party
 15 possesses material that appears to be privileged, protected, or otherwise immune. The procedures
 16 of paragraph 18 shall then apply.

17 20. The parties have agreed to follow the provisions of Fed. R. Civ. P. 26(b)(4)(B)-(D),
 18 as amended effective December 1, 2010, with respect to the protection of draft expert reports and
 19 communications between a party's attorney(s) and an expert(s). In addition, the parties have
 20 agreed that notes taken by the parties' experts in the course of the preparation of their reports,
 21 drafts of the expert reports, and all communications between counsel for the parties and their
 22 experts (including, but not limited to, emails and other written correspondence) (all of the
 23 foregoing hereinafter referred to as "Expert Work Product") need not be retained and shall be not
 24 produced in this or any other action. Expert Work Product shall not include communications,
 25 information and things that are relied upon by the expert in his or her opinions, or which otherwise
 26 form the basis of the expert's report. Neither the terms of this paragraph nor the parties'
 27 agreement to them implies that any of the information restricted from discovery in this paragraph
 28 would otherwise be discoverable.

1 21. Confidential Source Code shall mean human-readable programming language text
 2 that defines software, firmware, or electronic hardware descriptions. Confidential Source Code
 3 includes, without limitation, computer code; scripts; assembly; object code; source code listings
 4 and descriptions of source code; object code listings and descriptions of object code; Hardware
 5 Description Language (HDL); Register Transfer Level (RTL) files that describe the hardware
 6 design of any ASIC or other chip; similarly sensitive implementation details; files containing text
 7 written in "C," "C++," assembler, VHDL, Verilog, and digital signal processor (DSP)
 8 programming languages; ".include files;" "make" files; link files; and other human- readable text
 9 files used in the generation and/or building of software directly executed on a microprocessor,
 10 microcontroller, or DSP. Confidential Source Code is a form of, and shall be afforded all of the
 11 same protections as, Confidential Business Information as defined in paragraph 1 hereto unless
 12 otherwise provided in paragraphs 21 to 26. The restrictions herein on Confidential Source Code
 13 do not apply to publicly-available source code available as open source code.

14 22. To the extent that a party wishes to obtain access to Confidential Source Code, the
 15 following procedures may apply at the option of the supplier. Nothing in this Order shall be
 16 construed as a representation or admission by a party that Confidential Source Code is properly
 17 discoverable in this action, or to obligate any party to produce Confidential Source Code.

18 23. Documents or things that comprise a party's confidential, proprietary and/or trade
 19 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE.
 20 Documents or things that include or are accompanied by confidential, proprietary and/or trade
 21 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE only if
 22 such confidential, proprietary and/or trade secret source code or object code cannot reasonably be
 23 segregated from the document or thing. The following conditions shall govern the production,
 24 review and use of documents or things designated CONFIDENTIAL SOURCE CODE.

25 24. All information designated as CONFIDENTIAL SOURCE CODE shall be subject
 26 to the following provisions:

27 (i) Subject to the following notice provisions and each producing party's
 28 written objections, each producing party shall make its responsive CONFIDENTIAL

SOURCE CODE continuously available for inspection during discovery and through the conclusion of the trial in this action. Any single reviewing session (conducted during one business day or during consecutive business days of review) shall be conducted during regular business hours (9:00 A.M. to 6:00 P.M. local time) on four (4) calendar days' written (including email) notice, or during such other hours as may be mutually and reasonably agreed upon on reasonable notice.

(ii) A list of names of persons who will view the source code will be provided to the producing party in conjunction with the written notice requesting inspection. The receiving party shall maintain a daily log of the names of persons who enter the source code viewing room (see paragraph 24(iv) below) to view the source code and note on the log when these persons enter and depart. The producing party shall be entitled to have a person observe all entrances and exits from the source code viewing room, and to receive a copy of the log, but shall not otherwise be entitled to observe the receiving party's inspection.

(iii) All source code produced pursuant to these provisions will be made available by the producing party at the following locations:

- By Motorola, at the offices of Ropes & Gray LLP, 111 South Wacker Drive, 46th Floor, Chicago, Illinois 60606;
- By Microsoft, at the offices of Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005; and
- By third parties, at such location(s) as may be mutually agreed to by the producing third party and the requesting party, or as otherwise ordered by the Court.

(iv) All source code will be made available in a private room, on a secured computer without Internet access or network access to other computers, as necessary and appropriate to prevent and protect against any unauthorized copying, transmission, removal, or other transfer of any source code outside or away from the computer on which the source code is provided for inspection (the "Source Code Computer"). The producing party shall be obligated to install such reasonable tools or programs necessary to review and search the code produced on the platform produced, as specified by the receiving

1 party, which the receiving party may provide if the producing party does not have. For
 2 example, prior to the date of the inspection, a text editor or IDE capable of performing
 3 syntax highlighting should be installed on the Source Code Computer. The producing
 4 party shall not be obligated to install tools or programs capable of compiling and running
 5 source code. To the extent the receiving party provides the producing party with tools or
 6 programs to install for use during a reviewing session, any such tools or programs must be
 7 provided no later than five (5) business days in advance of the first reviewing session for
 8 which such installation is desired. Thereafter, such tools or programs shall remain on the
 9 Source Code Computer throughout the discovery period, absent agreement to the contrary.

10 (v) The receiving party's outside counsel and/or technical advisers shall be
 11 entitled to take notes relating to the source code but may not copy the source code into the
 12 notes. Such notes shall be subject to the provisions of paragraph 24(x) below. No copies
 13 of all or any portion of the source code may leave the room in which the source code is
 14 inspected. Furthermore, no other written or electronic record of the source code is
 15 permitted except as otherwise provided herein.

16 (vi) During inspection of the code, the receiving party may compile a list of
 17 source code files to be produced. The receiving party will only identify such files as are
 18 reasonably necessary to facilitate the receiving party's preparation of the case, including
 19 (1) when reasonably necessary to prepare any filing with the Court or to serve any
 20 pleadings or other papers on any other party, (2) to prepare internal attorney work product
 21 materials, (3) or to prepare other necessary case materials such as testifying expert reports,
 22 consulting expert written analyses, and related drafts and correspondences. In no event
 23 may the receiving party identify more than those files necessary to analyze the issues in
 24 this case during the duration of the case without prior written approval by the producing
 25 party. Upon identification of such files by the receiving party, the producing party shall
 26 print, append production numbers to, and label such files with the file's complete file path
 27 (*e.g., ./product1/source/main/test/test.h*) and the designation CONFIDENTIAL SOURCE
 28 CODE. If the producing party objects that identified files are not reasonably necessary to

any case preparation activity, the producing party shall make such objection known to the receiving party within five (5) business days of the identification of any files by the receiving party. If, after meeting and conferring, the producing party and the receiving party cannot resolve the objection, the producing party shall be entitled to seek a judicial resolution of whether or not the identified source code in question is reasonably necessary to any case preparation activity. In the absence of any objection, or upon resolution of any such dispute by the Court, the producing party shall provide one printed copy of the identified files to the receiving party within five (5) business days of the identification of such files by the receiving party or, if applicable, resolution of a dispute by the Court. The printed pages shall constitute part of the source code produced by the producing party in this action.

(vii) Unless otherwise agreed in advance by the parties in writing, following each reviewing session (conducted during one business day or during consecutive business days of review), the receiving party's outside counsel and/or technical advisers shall remove all notes, documents, laptops, and all other materials from the room that may contain work product and/or attorney-client privileged information. The producing party shall not be responsible for any items left in the room following each inspection session.

(viii) The receiving party will not copy, remove, or otherwise transfer any source code from the Source Code Computer including, without limitation, copying, removing, or transferring the source code onto any other computers or peripheral equipment. The receiving party will not transmit any source code in any way from the producing party's facilities or the offices of its outside counsel of record.

(ix) Documents designated CONFIDENTIAL SOURCE CODE may only be viewed by or disclosed to outside counsel or the receiving party's technical advisers approved by the producing party and their necessary support personnel. The term "technical adviser" shall mean an independent, outside expert witness or consultant with whom counsel may deem it appropriate to consult, subject to the following provision.

1 Documents designated CONFIDENTIAL SOURCE CODE may not be disclosed to in-
2 house counsel.

3 (x) A party desiring to disclose information to a technical adviser shall give
4 prior written notice to the producing party or non-party, who shall have ten (10) business
5 days after such notice is given to object in writing. A party desiring to disclose
6 CONFIDENTIAL SOURCE CODE information to a technical adviser must provide the
7 following information for each technical adviser: (i) name, address, curriculum vitae,
8 current employer, and employment (including consulting) history for the past four (4)
9 years; and (ii) a listing of cases in which the witness has testified as an expert at trial or by
10 deposition within the preceding four years. No CONFIDENTIAL SOURCE CODE
11 information shall be disclosed to such expert(s) or consultant(s) until after the expiration of
12 the foregoing notice period.

13 (xi) The outside counsel and technical advisers (who have been approved to
14 access source code under paragraphs 24(ix) and 24(x) above) for a receiving party shall
15 maintain and store any paper copies of the source code or notes related to such source code
16 (as referenced in paragraphs 24(v) and 24(vi)) at their offices in a manner that prevents
17 duplication of or unauthorized access to the source code or notes, including, without
18 limitation, storing the source code or notes in a locked room or cabinet at all times when
19 those materials are not in use;

20 (xii) The receiving party's outside counsel of record may make no more than
21 five additional paper copies of any portions of the source code files identified pursuant to
22 paragraph 24(vi), not including copies attached to court filings, and shall maintain a log of
23 all copies of the source code (received from a producing party) that are provided by the
24 receiving party to any qualified person. The log shall include the names of the recipients
25 and reviewers of copies and locations where the copies are stored. Any paper copies of
26 source code shall be designated CONFIDENTIAL SOURCE CODE — and shall be stored
27 or viewed only at (1) the offices of outside counsel for the receiving party, (2) the offices
28 of technical advisers who have been approved to access source code under paragraphs

1 24(ix) and 24(x), (3) the site where any deposition is taken, (4) the Court, or (5) any
 2 intermediate location necessary to transport the information to a hearing, trial, or
 3 deposition. Any such paper copies shall be maintained at all times in a locked and secure
 4 location. The producing party shall not unreasonably deny a receiving party's request to
 5 make (and log) additional copies, providing that the request is for good cause and for use
 6 that otherwise complies with this order. The producing party shall be entitled to a copy of
 7 the log upon request, and at the conclusion of the litigation.

8 (xiii) The receiving party may include excerpts of source code in a pleading,
 9 exhibit, expert report, discovery document, deposition transcript, other Court document, or
 10 any drafts of these documents ("Source Code Documents"). The receiving party shall only
 11 include such excerpts as are reasonably necessary for the purposes for which such part of
 12 the source code is used — as an example, excerpts of approximately 25 to 40 lines in
 13 length are presumptively reasonable.

14 (xiv) To the extent portions of source code are quoted in a Source Code
 15 Document, either (1) the entire document will be stamped CONFIDENTIAL SOURCE
 16 CODE or (2) those pages containing quoted source code will be separately bound, and
 17 stamped as CONFIDENTIAL SOURCE CODE. All Source Code Documents shall also be
 18 marked with the legend "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO
 19 PROTECTIVE ORDER," or a comparable notice, and shall be treated as Confidential
 20 Business Information pursuant to this Protective Order.

21 (xv) All paper copies of source code shall be securely destroyed if they are no
 22 longer necessary in the litigation (*e.g.*, extra copies at the conclusion of a deposition).
 23 Copies of source code that are marked as deposition exhibits shall not be provided to the
 24 court reporter or attached to deposition transcripts; rather, the deposition record will
 25 identify the exhibit by its production numbers.

26 (xvi) The receiving party may not create electronic images, or any other images,
 27 of the source code from the paper copy for use on a computer (*e.g.*, may not scan the
 28 source code to a PDF, or photograph the code). The receiving party may create an

1 electronic copy or image of selected portions of the source code only when reasonably
 2 necessary to accomplish any filing with the Court or to serve any pleadings or other papers
 3 on any other party (including expert reports). Images or copies of source code shall not be
 4 included in correspondence between the parties (references to production numbers shall be
 5 used instead) and shall be omitted from pleadings and other papers except to the extent
 6 permitted herein.

7 25. Unless otherwise ordered by the Court, Confidential Source Code designated as
 8 "CONFIDENTIAL SOURCE CODE" shall be subject to the provisions set forth in paragraphs 21
 9 to 26 and may be disclosed, subject to paragraphs 21 to 26, solely to:

10 (a) outside counsel representing the parties to this action, as defined in
 11 paragraph 3(i), including necessary secretarial and support personnel regularly employed by and
 12 assisting such counsel, except that, unless otherwise agreed, no outside counsel who is involved in
 13 competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3
 14 (Fed. Cir. 1984), shall have access to Confidential Source Code designated as "CONFIDENTIAL
 15 SOURCE CODE;"

16 (b) any outside expert or consultant retained by a party for the purposes of this
 17 action and who satisfies paragraph 3(iii) of this Order, provided that disclosure is only to the
 18 extent necessary to perform such work; and provided that:

19 (i) such expert or consultant has agreed to be bound by the provisions
 20 of this Order as required by paragraphs 3, 4, and 11 of this Order,

21 (ii) such expert or consultant is not involved in competitive decision-
 22 making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed.
 23 Cir. 1984), on behalf of a party or a competitor of a party in the technical subject
 24 matter of the Confidential Business Information produced, and

25 (iii) no unresolved objections to such disclosure exist after proper notice
 26 has been given to all parties as set forth in paragraphs 3, 4, and 11 of this Order;

27 (c) court reporters, stenographers, and videographers retained to record
 28 testimony taken in this action, provided that such court reporters, stenographers, and

1 videographers have agreed to be bound by the provisions of this Order as required by paragraph 4
2 of this Order;

3 (d) the Court;

4 (e) any persons who are witnesses during a deposition, court hearing, or trial
5 where specific documentary or testimonial evidence establishes at that time that the Confidential
6 Source Code or portion of the Confidential Source Code was authored or received by the witness
7 without any violation of any confidentiality obligation owed to any party in this action;

8 (f) any mediator who is assigned to hear this matter, and his or her staff,
9 subject to their agreement to maintain confidentiality to the same degree as required by this Order;

10 (g) any other person with the prior written consent of the supplier.

11 26. Access to and review of the Confidential Source Code shall be strictly for the
12 purpose of investigating the claims and defenses at issue in this action. No person shall review or
13 analyze any Confidential Source Code for purposes unrelated to this action, nor may any person
14 use any knowledge gained as a result of reviewing Confidential Source Code in this action in any
15 other pending or future dispute, proceeding, patent prosecution, or litigation.

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1 **AGREED AND STIPULATED TO:**

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25 **Attorneys for Defendants Motorola-**
26 **Solutions, Inc., Motorola Mobility, Inc.**

1 **ORDER**
2

As stipulated above, IT IS SO ORDERED.

3 DATED this _____ day of _____, 20122013.
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5 THE HONORABLE JAMES L. ROBART
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Attachment A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Case No. 10-1823

Plaintiff,

VS.

9 MOTOROLA, INC., MOTOROLA
10 MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION;

Defendants

**PROTECTIVE ORDER REGARDING
THE DISCLOSURE AND USE OF
DISCOVERY MATERIALS**

CONFIDENTIALITY AGREEMENT
PURSUANT TO PROTECTIVE ORDER

I, _____, hereby certify that I have read the Protective Order Regarding the Disclosure and Use of Discovery Materials (the “Order”) in the above-captioned case, that I agree to comply with the Order in all respects, and that I hereby submit and waive any objection to the jurisdiction of the United States District Court for the Western District of Washington for the adjudication of any dispute concerning or related to my compliance with the Order.

I understand and agree, in particular, that any Confidential Business Information and any copies, excerpts, or summaries thereof, as well as any knowledge or information derived from any of the aforementioned items, may be used solely for purposes of this litigation and may not be used for any other purpose, including without limitation, and business, commercial or academic purpose.

1 I further understand and agree that failure to abide fully by the terms of the Order may
2 result in legal action against me, including being held in contempt of court and liability for
3 monetary damages.

4

5 Signature: _____

6 Please print or type the following:

7 Name: _____

8 Title and Affiliation: _____

9 Address: _____

10 Telephone: _____

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Attachment B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Case No. 10-1823

Plaintiff,

VS.

9 MOTOROLA, INC., MOTOROLA
10 MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION;

Defendants

**PROTECTIVE ORDER REGARDING
THE DISCLOSURE AND USE OF
DISCOVERY MATERIALS**

**NONDISCLOSURE AGREEMENT FOR
REPORTER/STENOGRAFHER/TRANSLATOR**

I, _____, do solemnly swear or affirm that I will not divulge any information communicated to me in any confidential portion of the action or hearing in *Microsoft Corporation v. Motorola, Inc., Motorola Mobility, Inc., and General Instrument Corporation*, Civil Action No. 10-1823, except as permitted in the protective order issued in this case. I will not directly or indirectly use or allow the use of such information for any purpose other than that directly associated with my official duties in this case.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information communicated during any confidential portion of the action or hearing in this case.

1 I also affirm that I do not hold any position or official relationship with any of the
2 participants in said action.

3 Signed _____

4 Dated _____

5 Firm or Affiliation_____

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